

REMARKS

The Office Action requires restriction under 35 U.S.C. §121 to either Group I, claims 1-72, allegedly drawn to load balancing packet processing, or Group II, claims 73-82, allegedly drawn to time scheduling for transmission of packets. The Office Action asserts that these inventions are related as a combination and subcombination. The requirement for election is respectfully traversed and reconsideration is requested.

In order for a restriction to be proper, the inventions must be independent or distinct, and there must be a serious burden on the Examiner if the restriction is not made (emphasis added) (M.P.E.P. § 803). The second part of the test is detailed in M.P.E.P. § 803, which states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Applicants respectfully submit that search and examination of all pending claims 1-82 does not require a serious burden.

For example, Group II includes two independent claims: claim 73 and claim 79. Dependent claim 12 in Group I includes the features of independent claim 73 of Group II. Similarly, dependent claims 30 and 31 include the features of independent claim 79 of Group II. Therefore, in searching and examining the claims of Group I, the Examiner will necessarily search and examine the features of the independent claims of Group II. Therefore, search and examination of Groups I and II do not constitute a serious burden, and withdrawal of the Restriction Requirement and examination of pending claims 1-82 are respectfully requested.

In the event that the Examiner, after considering the discussion above, still believes that election to Group I or II is required, Applicants provisionally elect Group I (claims 1-72) with traverse.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

By: 

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